

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 21690 of 2007(F)

PETITIONER:

**SHAJI.S.NAIR,
KEDARAM,POTTAKKANETH,
KAYAMKULAM P.O.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:

- 1. THE MANAGER,
VIJAYA BANK,M.G.ROAD BRANCH,
ERNAKULAM.**
- 2. THE CHIEF MANAGER
(AUTHORISED OFFICER)
VIJAYA BANK,
M.G.ROAD, BRANCH, ERNAKULAM.**

**BY ADV. SRI.D.KRISHNA PRASAD
SMT.O.K.SANTHA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

KSS

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE NOTICE DTD. 1/10/2004 ISSUED BY THE BANK.**
- EXT.P2: COPY OF THE NOTICE DTD. 7/07/2005 ISSUED BY THE BANK.**
- EXT.P3: COPY OF THE NOTICE DTD. 4/08/2005 ISSUED BY THE 1ST RESPONDENT.**
- EXT.P4: COPY OF THE COUNTERFOIL DTD. 24/08/2005.**
- EXT.P5: COPY OF THE PROCEEDINGS DTD. 3/09/2005.**
- EXT.P6: COPY OF THE REPRESENTATION DTD. 25/03/2006 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXT.P7: COPY OF THE NOTICE DTD. 11/07/2004 RECEIVED BY THE PETITIONER FROM AN ADVOCATE COMMISSIONER.**

1ST RESPONDENT'S EXHIBIT:

- EXT.R1(A): COPY OF THE LETTER DTD. 27/04/2006 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**

/TRUE COPY/

P.A.TO JUDGE

KSS

ANTONY DOMINIC, J.

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W.P.(C) NO.21690 OF 2007 F
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Dated this the 28th day of November, 2007

J U D G M E N T

The prayers made in this writ petition are:

- a. Call for records leading to Ext.P7 and issue a writ of prohibition restraining the Chief Judicial Magistrate's Court, Alappuzha not to proceed ahead with C.M.P. No.2658/07.
- b. Issue a writ of prohibition or any other appropriate writ, direction or order restraining the Chief Judicial Magistrate's Court, Alappuzha not to proceed ahead with the eviction of the petitioner in terms of Ext.P7.

These two prayers have become infructuous. This is for the reason that the Chief Judicial Magistrate, Alappuzha has already passed order under Section 14 of the Act as early as on 19/7/07 and that order has become final in so far as the petitioner is concerned and hence the 1st prayer cannot be granted.

2. In so far as the 2nd prayer is concerned, in pursuance to the order dated 19/7/07, possession of the mortgaged property has already been taken over as early as on 5/9/07. Thus, in view of this, the writ petition practically has become infructuous.

3. However, the petitioner has filed IA No.15626/07, where he seeks permission for selling of the mortgaged property within 8 months. By this, what the petitioner intends to achieve is an order from this court to defer further proceedings for eight months. Learned counsel for the Bank points out that this request made by the petitioner lacks bonafides.

4. Making reference to Ext.R1(a) letter submitted by the petitioner as early as on 27/4/06, it is pointed out that the petitioner had sought time only till 15th of November 2006 for disposal of the property and liquidate the liability. This has not been done by the petitioner. It is also stated that on an earlier occasion, petitioner had filed writ petition as WP(C) No.11433/06 challenging the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, in which a conditional order of stay was passed requiring the petitioner to remit Rs.4,00,000/-. It is pointed out that this order was not complied with. On these reasons, the Bank contends that there is absolutely no bonafides in the request now made by the petitioner.

5. Having heard both sides, I am inclined to agree with the counsel for the respondent. As already noticed, the writ petition has practically become infructuous. As far as the present request of the petitioner for deferring the proceedings by 8 months is concerned, on facts, I am satisfied that there is no bonafides in the request. Petitioner had all the time from April, 2006, and he very well knew that proceedings will be continued. Till date, he has not made any such payment and there is no bonafides at all in the request now made by the petitioner. Added to all this, is the default he has committed in complying with the interim order that was passed in W.P.(C)No.11433 of 2006.

For these reasons, I am not satisfied that the writ petition does not merit consideration.

Writ petition fails and is dismissed.

ANTONY DOMINIC, JUDGE

Rp